

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**ETHEL WILLIAMS, JAN WRIGHTSELL, DONELL
HALL and EDWARD BRANDON, on behalf of
themselves and all others similarly situated,**

Plaintiffs,

v.

**ROD BLAGOJEVICH, in his official capacity as
Governor of the State of Illinois, CAROL L. ADAMS,
in her official capacity as Secretary of the Illinois
Department of Human Services, LORRIE STONE,
in her official capacity as Director of the Division of
Mental Health of the Illinois Department of Human
Services, ERIC E. WHITAKER, in his official capacity
as Director of the Illinois Department of Public Health,
and BARRY S. MARAM, in his official capacity as
Director of the Illinois Department of Healthcare and
Family Services,**

Defendants.

Civil Action No. 05 C 4673

Judge Hart

Magistrate Judge Denlow

DEFENDANT’S RESPONSE TO MOTION FOR CERTIFICATION OF CLASS

NOW COMES GOVERNOR ROD BLAGOJEVICH, by and through his attorneys, KERRY R. PECK and RAY J. KOENIG III of Peck, Bloom, Austriaco & Mitchell, LLC, as Special Assistant Attorneys General, and in response to Plaintiffs’ Motion for Certification of Class, states as follows:

1. Plaintiffs propose a class of all persons who:
 - (I) have a mental illness;
 - (II) with appropriate supports and services, could live in the community; and
 - (III) are institutionalized in privately -owned Institutions for Mental Diseases (“IMDs”).
2. Plaintiffs allege that Defendants have allowed them to be "needlessly segregated" in IMDs and failed to provide them with services in the most integrated setting appropriate to their

needs. Plaintiffs' claims are based on the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), interpreting Title II of the American with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131, 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

3. An action may be maintained as a class action if all of the prerequisites of Rule 23(a) and at least one of the three elements of Rule 23(b) are satisfied. *See Fed.R.Civ.P. 23.*

4. Under Rule 23(a), the class must be so numerous that joinder of all members is impracticable ("numerosity"). Second, there must be questions of law or fact common to the class ("commonality"). Third, the claims or defenses of the representative parties must be typical of the claims or defenses of the class ("typicality"). Fourth, the Court must be satisfied that the representative parties and their counsel will fairly and adequately protect the interests of the class ("adequacy"). Fed.R.Civ.P. 23(a). In addition, "there is a 'definiteness' requirement implied in Rule 23(a)" which dictates that "the description of a class [be] sufficiently definite to permit its ascertainment of the class members." *Alliance to End Repression v. Rochford*, 565 F.2d 975, 977 (7th Cir.1977).

5. Under Rule 23(b)(2), for which the Plaintiffs allege that this action qualifies, Plaintiffs must prove that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." *See Fed. R. Civ. P. 23(b)(2).*

6. Plaintiffs have failed to meet the requirements of 23(a) and 23(b) for class certification.

7. Defendant has not acted or refused to act on grounds generally applicable to the proposed class in violation of *Olmstead*. The documents obtained from Monroe Pavilion, Wilson Care, and Greenwood Care, the facilities in which Plaintiffs reside, detail the named Plaintiffs'

medical history and treatment and are evidence that the Defendant has provided a thorough and comprehensive level of treatment planning to ensure that Plaintiffs are in the most integrated environment suitable to their needs and capabilities.

8. Further, the claims or defenses of the named parties are not typical of the claims or defenses of the class. The proposed defined class includes IMD residents who are ready to live in a less structured setting but have been denied by Defendant the opportunity to do so in violation of *Olmstead*. However, all of the named Plaintiffs have recently been found by the treatment professionals to be in need of the level of care provided in their current IMD settings and/or have expressed a desire to remain at an IMD.

9. Last, the proposed class is vague and over broad. Mentally disabled persons residing at Illinois IMDs suffer from a wide array of ailments, and treatment for each resident depends on his/her diverse factual circumstances. The proposed defined class does not sufficiently identify and define the class. Thus, the Court cannot readily ascertain its members by reference to some objective criteria. It is unclear what medical and mental threshold the IMD residents must meet to be deemed able to live in the community with “appropriate supports and services.”

10. Further, *Olmstead* states that non-consenting patients do not have to be moved. 527 U.S. at 602. Plaintiffs’ proposed class would seek to include all IMD residents able to live in the community, including non-consenting IMD residents.

11. Defendant has prepared the attached Memorandum in Support of his Response to Plaintiffs’ Motion for Certification of Class, which demonstrates that class certification is inappropriate.

WHEREFORE, Defendant respectfully requests that this Honorable Court deny Plaintiffs' Motion for Certification of Class.

Respectfully submitted,

ROD BLAGOJEVICH

s/ Ray J. Koenig III
Special Assistant Attorney General
Counsel for Defendant Governor Rod Blagojevich

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